(1)

Supreme Court, U.S.
FILED

05-13 JUN 29 2005

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

RUSSELL L. LEE,

Petitioner,

v.

RUFUS G. KING, III,
CHIEF JUDGE, SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

RUSSELL L. LEE
4100 Massachusetts Ave., N.W.
#1319
Washington, D.C. 20016
(202) 364-1187
Petitioner Pro Se.

June 29, 2005

Washington, D.C. • THIEL PRESS • (202) 328-3286

QUESTION PRESENTED

Did the District of Columbia Court of Appels err in not requiring the Foreign Judgment Branch of D.C. Superior Court to enforce Petitioner's final, valid and foreign judgment?

PARTIES TO THE PROCEEDING

The parties to the proceeding are as stated on the cover to this Petition For Writ Of Certiorari.

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28 U.S.C. section 1254(1). 1

PETITION FOR WRIT OF CERTIORARI

Petitioner, Russell L. Lee, requests this Court to issue a writ of certiorari to review the judgment of the District of Columbia Court of Appeals which denied Petitioner's Petition For Writ Of Mandamus.

OPINIONS BELOW

The order of the Court of Appeals which denied the petition issued on March 10, 2005, and is reproduced herein as Appendix C (App. 11a). The order denying rehearing issued on March 31, 2005, and is reproduced herein as Appendix (App. 1a). The orders are unpublished.

JURISDICTION

The District of Columbia Court of Appeals issued its opinion (App. 11a) on March 10, 2005, and its order denying rehearing (App. 1a) on March 31, 2005. This Court has jurisdiction pursuant to 28 U.S.C. section 1254(1).

STATUTES INVOLVED

This case entails the Full Faith and Credit Act, Title 28, U.S.C. Section 1738 (App. 23a); and District of Columbia Code section 15-352 (App. 23a).

STATEMENT

Petitioner seeks review of a decision of the D.C. Court of Appeals upholding the decision by the Honorable Rufus G. King, III, Chief Judge of the D.C. Superior

Court, to deny Petitioner his right to enforce a judgment in the Foreign Judgment Branch of the D.C. Superior Court, in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Petitioner believes that the decision of the Court of Appeals is inconsistent with numerous controlling decisions of this Court.

SUMMARY OF THE ARGUMENT

Under Full Faith and Credit, the California award, a final judgment, is entitled to res judicata effect in the District of Columbia.

ARGUMENT

Petitioner undertook to file a copy of a California workers' compensation award in the Foreign Judgment Branch of the D.C. Superior Court for enforcement. The order awarded, among other things, attorney's fees in petitioner's favor and against the State Compensation Insurance Fund. A clerk at the Foreign Judgment Branch refused to file it, telling petitioner, "Go to California to enforce it; You can't enforce it here."

Petitioner wrote to the Honorable Rufus G. King, III, Chief Judge of the D.C. Superior Court seeking help in convincing employees in the Foreign Judgment Branch to comply with the requirements of Super.Ct.Civ.R. 72 (App. 15a).[1]

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[1] A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the Clerk by the

[footnote continued]

Judge King never replied.[2] Several months later, Petitioner sought a writ of mandamus to compel the Foreign Judgment Branch to perform its duty pursuant to Rule 72. (App. 3a).

The Court of Appeals denied the petition on March 10, 2005 (App. 11a). Petitioner's motion for reconsideration was denied on March 31, 2005 (App. 1a). A copy of Petitioner's Motion For Reconsideration is attached hereto. (App. B, p. 3a). Judge King made no appearance below at all, making default.

On the presumption that Petitioner's Writ of Mandamus and the claim Petitioner would file in the Foreign Judgment Branch were the same, said the Court of Appeals: "It appears that appellant has filed a complaint in Superior Court and has appealed that trial court in appeal no. 04-CV-778." That was not the case; the claims are separate and distinct.

The claim Petitioner meant to file in the Foreign Judgment Branch is failure to pay attorney's fees. The subsequent dismissal of the claim in Case No. 04-CA-778, refusal to pay medical benefits, was affirmed by the

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judgment creditor or the judgment creditor's lawyer. The judgment sought to be filed shall be authenticated in accordance with District of Columbia law. The judgment creditor or counsel shall accompany the filing with the information called for in SCR Civil Action Form 112, "Request to File Foreign Judgments," and shall pay the filing fee established by the Court. A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, D.C. Code sections 15-351 through 15-357.

[2]Judge King never responded to any of Petitioner's papers below; no effort therefore was made to file a joint appendix.

Court of Appeals. (App. 1a). The Court of Appeals' disposal of the one claim, however, did not dispose of the other.

The Petitioner herein argues that: the whole point of the 04-CA-778 ruling is that State long-arm statute – for the purpose to enforce a foreign judgment – trumps Full Faith and Credit. On the contrary, "It is well established that pursuant to the Supremacy Clause, state laws that interfere with, or are contrary to federal law are invalidated." *Washkoviak v. Student Loan Marketing Association,* 849 A.2d 37, 41.

REASONS FOR GRANTING THE PETITION

1. The whole point in the case the Court of Appeals cited as authority to deny Appellant's petition for reconsideration, *People's Counsel, Etc. v. Public Serv. Com'n,* 414 A.2d 516, 518, has no application whatsoever to the claim Petitioner would like to raise in the Foreign Judgment Branch of the D.C. Superior Court.

2. The decision by the District of Columbia Court of Appeals not to enforce the California judgment conflicts with the decision in the case of *Von Plinsky v. Harvey,* 820 A.2d 549 (2003), where the District of Columbia Court of Appeals reversed the Superior Court and enforced a Virginia judgment.

3. The District of Columbia Court of Appeals has decided in *Masri v. Adamar of New Jersey, Inc.,* 595 A.2d 398 (1991); *Vickery v. Garretson,* 527 A.2d 293 (1987); *Shanklin v. Bender,* 283 A.2d 651 (1971), and in like cases, that Full Faith and Credit applies to foreign judgments in the District of Columbia.

4. According to this Court, full faith and credit is required by 28 U.S.C. Section 1738: the "Acts, records

and judicial proceedings . . . [of any State] shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of [the] State . . . from which they are taken." *Thomas v. Washington Gas Light Co.*, 448 U.S. 261.

The Superior Court, in refusing to perform its statutorily imposed duty to enforce the laws, denied equal protection to Petitioner who legitimately sought to exercise rights guaranteed under state and federal law.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

RUSSELL L. LEE
4100 Massachusetts Ave., N.W.
#1319
Washington, D.C. 20016
(202) 364-1187
Petitioner Pro Se.

June 29, 2005

APPENDIX A

[Filed Mar 31, 2005]

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 05-OA-12

RUSSELL LEE,

Petitioner,

v.

HONORABLE RUFUS G. KING, III., ET AL.,

Respondents.

BEFORE: Schwelb and Ruiz, Associate Judges and King, Senior Judge.

ORDER

On consideration of petitioner's motion for reconsideration, it is

ORDERED that the motion for reconsideration is denied.

PER CURIAM

Copies to:
Honorable Rufus G. King, III

Clerk, Superior Court

Russell L. Lee
4100 Massachusetts Avenue, N.W., #1319
Washington, D.C. 20016

APPENDIX B

[Filed Mar 16, 2005]

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 05-OA-12

RUSSELL L. LEE,

Petitioner,

v.

HONORABLE RUFUS G. KING, III., ET AL.,

Respondents.

MOTION FOR RECONSIDERATION

COMES NOW Petitioner and seeks reconsideration of the March 10, 2005 denial of Petition for Writ of mandate and shows the Court as follows:

Most natural thing in the world, to limit the March 7, 2005 Motion for Writ of Mandamus to reimbursement for self-procured medical treatment. The Court was not mislead on purpose, however.

While Fund's failure to comply with Finding #6 of the award is evil, refusal to comply with Finding #7, however, was the greater evil.

Petitioner was in a very bad psycho-emotional state in the 1990s, and in 1990 when the Findings and Award issued, walking around in a coma as it were daily. Repeatedly over the years he read the award but did not see until 1998 Fund's failure to pay permanent disability. It paid it in 1998. Whatever Petitioner read in those dark days never sunk in, registered or impressed.

Petitioner did not see that the October 4, 1990 Findings and Award by Workers' Compensation Judge Beverly S. Herbert provided for "attorney's fees in favor of RUSSELL L. LEE, and against STATE COMPENSATION INSURANCE FUND," inter alia; as his predicament was that severe. It did not sink in.

So, State Fund lawyers and Petitioner's lawyers took advantage of it in really a big way. They arranged for Workers' Compensation Judge John K.C. Mah to issue a contrary award on November 19, 1991, awarding attorneys' fees in favor of STATE COMPENSATION INSURANCE FUND and against RUSSELL LEE.

Fund deducts about $40 per week from Petitioner's permanent disability to pay Petitioner's lawyers attorneys' fees. It will so deduct for the remainder of Petitioner's life, unless a court compels intervenes. A copy of the 1991 award is attached hereto. Fund has yet to comply with the 1990 award as to attorney's fees.

The Court apparently knows: Lee will never have reason to file in the Foreign Judgment Branch. "It is fundamental that in an action on a judgment the original cause of action cannot be examined in the merits, the area of attack being limited to jurisdiction and fraud in the procurement." *Indemnity Ins. Co. of North America v. Smoot*, 152 F.2d 667, 669. Smoot never went to Illinois to enforce her judgment.

For what reason, then, are similarly situated District citizens treated differently? Have they no constitutional right to enforce judgments in the Foreign Judgment Branch? If so, the trial court could be told as much. WHEREFORE, Petitioner would that the writ should issue.

* * *

Concerning #05-OA-12's dismissal: having dismissed for lack of jurisdiction, the court lacked power to dismiss for failure to state a claim. On the other hand, if dismissed for failure to state a claim, it exercised personal jurisdiction thereby. The *Fox* Court expressed it this way:

> In the present case we deal with a complete lack of jurisdiction and I understand the rule to be that where a court lacks jurisdictionof a case, its only power over the case is to dismiss for lack of jurisdiction.

Fox v. Shannon & Luchs Company of Washington, 236 A.2d 60, 62 (1967).

DATED: March 16, 2005

Respectfully submitted,

/s/ Russell L. Lee
Russell L. Lee, Pro Se
#1319
4100 Massachusetts Ave, NW
Washington, DC 20016
202.364.1187

[Certificate of Service Omitted In Printing]

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

Division of Industrial Accidents

WORKERS' COMPENSATION APPEALS BOARD

CASE NO. POM 0096894

RUSSELL LEE,

Applicant

v.

DEPARTMENT OF CORRECTIONS,
STATE COMPENSATION INSURANCE FUND;

Defendants.

MINUTES OF HEARING

(Trial)

ORDER TAKING OFF CALENDAR

Place and Time: Acoura Hills, California; October 10, 1991, 9:00 a.m.

Judge: JOHN MAH
Reporter: Joan Mackay
Appearances: Applicant
Koszdin, Siegel & Fiels, by Jack Koszdin, attorneys for the applicant

Warren Lobdell, attorney for State Compensation Insurance Fund, for the defendant

Alfred Kaufman, lien claimant

Witnesses: Alfred Kaufman

ISSUES

1. APPLICATION FOR A NEW INJURY WHILE INVOLVED IN A REHABILITATION PROGRAM.

2. CLAIM FOR TEN PERCENT PENALTY FOR UNREASONABLE DELAY BY DEFENDANTS IN PROVIDING BENEFITS UNDER THE FINDINGS AND AWARD OF OCTOBER 4TH, 1990.

3. THE ISSUE RAISED BY STATE COMPENSATION INSURANCE FUND, AS TO REASONABLENESS OF PSYCHIATRIC TREATMENT SOUGHT BY THE APPLICANT.

THESE ADDITIONAL ISSUES ARE OFF CALENDAR AT THIS TIME.

THE FOLLOWING ISSUES WILL BE DECIDED:

1. THE REASONABLE VALUE OF THE LEGAL SERVICES RENDERED BY APPLICANT'S ATTORNEYS ALBERT I. KAUFMAN AND JACK KOSZDIN IN THIS MATTER.

2. A DIVISION OF THE ATTORNEYS' FEES BETWEEN ALBERT I. KAUFMAN AND JACK KOSZDIN.

STIPULATIONS

1. THE REASONABLE VALUE OF THE LEGAL SERVICES RENDERED BY APPLICANT'S ATTORNEYS IS $20,000.00.

2. COMMENCING NOVEMBER 18TH, 1991, APPLICANT'S WEEKLY LIFE PENSION BENEFIT OF $224.00 IS REDUCED TO $201.38 IN ORDER TO COMMUTE THE AWARD OF ATTORNEYS' FEES OF $20,000.00.

3. ALBERT KAUFMAN'S LIEN FOR ATTORNEY'S FEE WILL BE ASSIGNED AND ADJUSTED BY JACK KOSZDIN.

LET THE MINUTES REFLECT THAT THE PARTIES WAIVE THE SUMMARY OF EVIDENCE.

DISPOSITION: THIS MATTER IS NOW OFF CALENDAR WITH THE ISSUES AS STATED EARLIER TODAY.

/s/ John K.C. Mah
John K.C. Mah
WORKERS' COMPENSATION JUDGE

SERVICE BY MAIL ON THE PARTIES
SHOWN ON THE OFFICIAL ADDRESS RECORD

BY: /s/ ESTEE LOANZA
DATE: NOVEMBER 19, 1991

APPENDIX C

[Filed Mar 10 2005]

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 05-OA-12

RUSSELL LEE,

Petitioner,

v.

HONORABLE RUFUS G. KING, III., ET AL.,

Respondents.

BEFORE: Schwelb and Ruiz, Associate Judges and King, Senior Judge.

ORDER

On consideration of the petition for writ of mandamus wherein petitioner is referencing a 1990 compensation order from California and it appearing that appellant has also filed a complaint in Superior Court and has appealed that trial court order in appeal no. 04-CV-778, it is

ORDERED that the petition for writ of mandamus is denied. *See People's Counsel for D.C. v. Public Serv. Comm'n*, 414 A.2d 516, 518 (D.C. 1980).

PER CURIAM

Copies to:

Honorable Rufus G. King, III

Russell L. Lee
4100 Massachusetts Avenue, N.W., #1319
Washington, D.C. 20016

APPENDIX D

[Filed Mar 7 2005]

COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

RUSSELL L. LEE,

Petitioner

v.

DISTRICT OF COLUMBIA SUPERIOR COURT,
FOREIGN JUDGMENT BRANCH,

Respondent.

PETITION FOR WRIT OF MANDAMUS

Petitioner seeks of the Court a writ of mandamus to compel the Foreign Judgment Branch of the D.C. Superior Court to comply with the requirements of Super Ct. R. Civ. 72.

In mid 2004, Petitioner would file with the Foreign Judgment Branch of the D.C. Superior Court a certified copy of a California workers' compensation award for enforcement. An employee refused to file it. "You'll have to go to California to enforce it," he said, "You can't enforce it here."

Petitioner further researched filing a foreign judgment. Subsequently, he wrote a letter to the Honorable Rufus King III, Chief Judge of the D.C. Superior Court asking for help. He never responded.

Rather than repeat the filing argument set out in the letter, a true and correct copy of it is attached hereto as **Exhibit A.** Petitioner affirms under penalty of perjury that the contents of this petition and letter are true.

WHEREFORE, Petitioner asks that the Court:

a) issue an order compelling the Foreign Judgment Branch to comply with Rule 72; and

b) grant such other and further relief as the Court deems just.

DATED: March 7, 2005

Respectfully submitted,

/s/ Russell L. Lee
Russell L. Lee, Pro Se
#1319
4100 Massachusetts Ave, NW
Washington, DC 20016
202.364-1187

[Certificate of Service Omitted in Printing]

EXHIBIT A

December 19, 2004

The Honorable Rufus King III
Chief Judge
D.C. Superior Court
555 Indiana Avenue, NW
Washington, DC 20001

Re: Filing a Foreign Judgment

Dear Judge:

How are you?

I seek your help in convincing the Foreign Judgment Branch of the D.C. Superior Court to comply with the requirements of Rule 72.

Recently I tried to file a California worker's compensation award with the Foreign Judgment Branch of the D.C. Superior Court but was told to go to California to enforce it. "You can't enforce it here." Such was the order of the branch supervisor, one Ms. Brooks, I was told.

Now, if that is true, then the purpose of the Full Faith and Credit is defeated. D.C. Code section 15-352 provides:

> A copy of any foreign judgment authenticated in accordance with the laws of the District may be filed in the Office of the Clerk of the Superior Court ("Clerk"). A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner.

Just last year the Court of Appeals of the District of Columbia enforced a Virginia judgment.

> Appellant Michael Von Plinsky obtained a default judgment in Virginia against appellee Edwin Harvey in a suit on a promissory note. Von Plinsky filed the Virginia judgment in Superior Court pursuant to D.C. Code section 15-352 (2001), a provision of the Uniform Enforcement of Foreign Judgments Act of 1990. That section provides that a foreign judgment so filed "shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner." *See also* Super.Ct.Civ.R. 72. *Von Plinsky v. Harvey,* 820 A.2d 549 (D.C. 2003).

In another case, an award of disability compensation under the Virginia Workmen's Compensation Act was accorded res judicata effect in the District of Columbia. *Thomas v. Washington Gas Light Co.,* 448 U.S. 261, 264 (1980).

Enforcement of a portion of the award under the caption SELF-PROCURED MEDICAL TREATMENT, p. 4 needs to happen as Fund has not complied with the award in terms of making an adjustment (a copy of the award is attached hereto). The issues of paying for self-procured medical treatment and mileage, etc., are still alive. *Avalon Bay Foods v. Workers' Comp. App. Board,* 18 Cal.4th 1165 (1998) 959 P.2d 1228, 77 Cal.Rptr.2d 552.

> As one respected authority on administrative law has observed: "The law of res judicata, much more than most other segments of law, has rhyme, reason, and rhythm – something in common with good poetry. Its inner logic is rather satisfying. It con-

> sists entirely of an elaboration of the obvious principle that a controversy should be resolved once, not more than once. The principle is as much needed for administrative decisions as for judicial decisions. To the extent that administrative adjudications resemble courts' decisions – a very great extent – the law worked out for courts does and should apply to agencies." 4 K. Davis, Administrative Law Treaties §21.9, p. 78 (2d ed. 1983). The Restatement (Second) of Judgments §83, p. 269 (1982), reaches a similar conclusion: "Where an administrative forum has the essential procedural characteristics of a court, . . . its determinations should be accorded the same finality that is accorded the judgment of a court. The importance of bringing a legal controversy to conclusion is generally no less when the tribunal is an administrative tribunal than when it is a court."

University of Tennessee v. Elliott, 478 U.S. 788, 798 [fn6] (1986).

Then, I trust Your Honor will intervene and allow Petitioner to file his award with the Foreign Judgment Branch of the D.C. Superior Court.

Thank you for any consideration and action.

Respectfully,

Russell L. Lee
#1319
4100 Massachusetts Ave, NW
Washington, DC 20016
202.364.1187

STATE OF CALIFORNIA

WORKERS' COMPENSATION APPEALS BOARD

Case No. 84 POM 96894

RUSSELL L. LEE

Applicant,

vs.

DEPARTMENT OF CORRECTIONS;
STATE COMPENSATION INSURANCE FUND

Defendants.

FINDINGS AND AWARD

BEVERLY S. HERBERT, Workers' Compensation Judge, finds, awards, and orders as follows:

FINDINGS OF FACT

(1) RUSSELL L. LEE, born July 15, 1921, while employed as a teacher, during the period October 17, 1979 to May 2 1985 did sustain an injury to his heart and psyche arisingout of and occurring in the course of employment by the State of California, Department of Corrections who was then legally uninsured, with State Compensation Insurance Fund as adjusting agent, sustained injury arising out of and in the course of said employment.

(2) Average weekly earnings at injury were maximum.

(3) In addition to sums paid for previous awards, the injury caused temporary total disability beginning July 8, 1988, to and including April 21, 1989 at $224.00 per week, in the total sum of less all sums paid on account thereof.

(4) The injury caused permanent disability of 100% equivalent to $224.00 per week for the duration of applicant's life less credit for all sums paid on account thereof. Disability became permanent on April 22, 1990.

(5) Further medical treatment is required to cure or relieve from the effects of this injury.

(6) Applicant secured necessary medical services to cure or relieve from the effects of his injury payable to Drs. Tweed and McCandless in an amount to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents, but not necessarily limited to those doctors.

(7) The reasonable value of the services of applicant's attorney is deferred pending a petition by counsel with itemization on time spent by counsel in this manner.

AWARD

AWARD IS MADE in favor of RUSSELL L. LEE, and against STATE COMPENSATION INSURANCE FUND as follows:

(a) Temporary disability indemnity pursuant to Finding No. 3.

(b) Reimbursement of self-procured medical expenses according to Finding No. 6.

(c) Permanent disability according to Finding No. 4.

(d) Further medical treatment according to Finding No. 5.

(e) Applicant attorney's fees pursuant to Finding No. 7.

/s/ Beverly S. Herbert
BEVERLY S. HERBERT
WORKERS' COMPENSATION JUDGE

Filed and Served by mail on:
all parties on the
Official Address Record
By: /s/ Gloria Fisher
Gloria Fisher
10-4-90

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84 POM 0096894

OPINION ON DECISION

Injury Arising Out of and Occurring in the Course of Employment

Based on the applicant's testimony and the medical opinions of Drs. Edward O'Neill, A. R. Tweed, and Jacqueline McCandless it is determined that the applicant sustained an injury arising out of and occurring in the course of his employment with the State of California, Department of Corrections during the period May 2, 1984 to May 2, 1985.

Temporary Disability

Based on the foregoing opinion of Dr. Tweed, it is also determined that the applicant was temporarily totally disabled from July 8, 1988 to and including April 21, 1990.

Permanent Disability and Apportionment

Based on the applicant's credible unrebutted testimony and the medical opinion of Drs. Tweed, McCandless and O'Neill it is found that the applicant sustained 100% permanent disability.

Need For Future Medical Treatment

It is found that the applicant is in need of future medical treatment based on the medical opinion of Drs. Tweed, ONeill and McCandless

Self-Procured Medical Treatment

Based on the medical opinions contained in the report of Drs. Tweed, O'Neill and McCandless it is found that

the applicant reasonably self-procured medical treatment and is entitled to reimbursement of mileage in an amount to be adjusted by the parties, with jurisdiction reserved by the Court.

Liability for Medical Legal Costs

It is found that the medical legal liens are to be adjusted by the parties with jurisdiction reserved by the Board.

/s/ Beverly S. Herbert
Beverly S. Herbert
Division of Workers' Compensation

APPENDIX E

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. section 1738. State and Territorial statutes and judicial proceedings; full faith and credit:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and itx Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

D.C. Code Section 14-352 reads in full:

> A copy of any foreign judgment authenticated in accordance with the laws of the District may be filed in the Officer of the Clerk of the Superior Court ("Clerk"). A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner.

APPENDIX F

[Filed June 8, 2005]

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 04-CV-778

RUSSELL LEE, APPELLANT,

v. CA-414-04

STATE COMPENSATION INSURANCE FUND, APPELLEE.

Appeal from the Superior Court of the
District of Columbia
Civil Division

(Hon. Michael L. Rankin, Trial Judge)

(Submitted June 7, 2005 – Decided June 8, 2005)

Before SCHWELB, FARRELL and REID, *Associate Judges.*

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: On January 20, 2004, the appellant, Russell Lee, filed a complaint in the Superior Court against the appellee, State Compensation Insurance Fund ("Fund"), and "adjusting agent for the California Depart-

ment of Corrections," alleging that the Fund had failed to comply with a judgment entered in October 1990 in California. By order dated March 31, 2004, the trial court dismissed Mr. Lee's complaint for want of personal jurisdiction and for failing to state a claim. We affirm.

FACTUAL SUMMARY

The record before the court reflects that on January 20, 2004, Mr. Lee filed a complaint in the Superior Court against the State Compensation Insurance Fund ("Fund").[1] Mr. Lee alleged that the Fund had failed to comply with a judgment, entered by a California state court, awarding him disability benefits for an injury "to his heart and psyche" that he suffered "during the period [from] October 17, 1979 to May 2, 1985," while an employee of the California Department of Corrections. On February 11, 2004, the Fund filed a motion to dismiss Mr. Lee's complaint, asserting that the Superior Court lacked personal jurisdiction over the Fund, a non-resident entity, to adjudicate Mr. Lee's claim. The Fund also asserted that Mr. Lee's complaint should be dismissed for insufficient service of process and because he had failed to state a claim for which relief could be granted.

By order dated March 31, 2004, the trial court dismissed Mr. Lee's complaint with prejudice. The trial court concluded that Mr. Lee "failed to show that the D.C. Superior Court has personal jurisdiction," and that,

---

[1] The State Compensation Insurance Fund maintains that it is an "insurer of last resort" which was "created by the California legislature to . . . [insure] California employers who are required to secure workers' compensation insurance in the event their employees suffer industrial accidents or injuries."

in any event, he had "failed to state a cognizable claim." On April 7, 2004, Mr. Lee filed a motion for reconsideration which the trial court denied on May 20, 2004. On June 21, 2004, Mr. Lee filed a timely notice of appeal.

ANALYSIS

Relying on the doctrine of res judicata, Mr. Lee asserts that the Fund was prevented from asserting a personal jurisdiction defense because it had failed to raise the defense in the California proceedings when the case was first litigated. Mr. Lee also asserts that "[the Fund] should have raised its failure-to-state-a-claim issue in California, not in the District."[2] We affirm.

"As an initial matter, we note that [Mr. Lee], as the plaintiff, has the burden of establishing that the trial court had personal jurisdiction over [the Fund], the . . . defendant in the litigation." *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 269 (D.C. 2001) (citing *Parsons v. Mains*, 580 A.2d 1329, 1330 (D.C. 1990)). "A court may assert personal jurisdiction over a nonresident defendant where service of process is authorized by statute and where the service of process so authorized

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[2] In the conclusion of his opening brief, Mr. Lee states that: "Orders disregarding full faith and credit cannot invalidate the judgment." To the extent that he relies on the Full Faith and Credit clause of Article IV, § 1 of the Constitution of the United States, that reliance is misplaced. Generally, that clause applies to " '[a] final judgment . . . rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment.' " *Franchise Tax Bd. v. Hyatt*, 538 U.S. 488, 494 (U.S. 2003) (citation omitted). Here, there is no indication in the record that any California workers' compensation award applicable to Mr. Lee has been properly certified. *See* 28 U.S.C. § 1739.

is consistent with due process." *Mouzavires v. Baxter*, 434 A.2d 988, 990 (D.C. 1981) (citing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)). Pursuant to the District's long-arm statute, *see* D.C. Code § 13-423 (2001), a court in the District of Columbia may only exercise jurisdiction over an out-of-state defendant in seven enumerated situations.[3] While the District's long-arm statute "is coextensive in reach with the personal jurisdiction allowed by the due process clause of the United States Constitution," *see Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 329 (D.C. 2000) (en banc), Mr. Lee "must allege some specific facts evidencing purposeful activity by the defendant in the District

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[3] D.C. Code § 13-423 provides, in relevant part:

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's –

(1) transacting any business in the District of Columbia;

(2) contracting to supply services in the District of Columbia;

(3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia;

(4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;

(5) having an interest in, using, or possessing real property in the District of Columbia;

(6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting, unless the parties otherwise provide in writing; or

(7) [there is a] marital or parent and child relationship in the District of Columbia . . . .

of Columbia by which it invoked the benefits and protects of the District's laws," *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F.Supp. 515, 520 (D.D.C. 1995).

In his complaint, and even on appeal, Mr. Lee has failed to allege "some specific facts," *see COMSAT, supra,* which would show that the Fund had "minimum contacts" with the District "such that the maintenance of the suit [would] not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (U.S. 1945) (citation and quotation marks omitted). Instead, Mr. Lee argues that the Fund is procedurally barred from asserting a personal jurisdiction defense because it failed to raise the defense in California when the case was first litigated. The trial court erred, he reasons, by considering a defense which should have been raised, if at all, in the California court.

Mr. Lee is correct that in some circumstances a defendant's failure to contest a court's exercise of jurisdiction will act as a bar to the defendant's ability to raise the issue in a subsequent proceeding. *See, e.g., Hazen Research, Inc. v. Omega Minerals, Inc.*, 497 F.2d 151, 153 (5th Cir. 1974) ("Where the defendant has appeared in the original action, the judgment in that cause is res judicata on the issue of personal jurisdiction, whether the defendant actually litigated the question or merely permitted it to pass without objection."). However, contrary to Mr. Lee's contention, a defendant's failure to raise a personal jurisdiction defense in one state does not necessarily make the defendant vulnerable to suit in every state. Taken to its logical extreme, Mr. Lee's argument suggests that because the Fund did not object to the California court's exercise of personal jurisdiction in the original suit, it may now be sued in any state court,

including the District of Columbia. This contention is untenable, and would "offend traditional notions of fair play and substantial justice." *International Shoe Co.*, 326 U.S. at 316.

We agree with the trial court that it lacked personal jurisdiction to adjudicate Mr. Lee's claim. The Fund, an insurer of last resort, was created by the California legislature to protect California employers against accidents and injuries to their employees. As Mr. Lee acknowledges, the Fund is principally organized and located in California, and does not maintain an office in the District of Columbia. Nor does it transact business or have any enumerated contacts with the District of Columbia. The single contact that the Fund has with the District – specifically, it mails disability payments to Mr. Lee's home – is a result of Mr. Lee's unilateral decision to move into the District of Columbia. However, "[a] plaintiff's unilateral activity in relation to a defendant cannot alone sustain personal jurisdiction under the 'minimum contacts' theory." *Shoppers Food Warehouse*, 746 A.2d at 325 (citing *Hanson v. Denckla*, 357 U.S. 235 (1958)). Based on this record, there is nothing to suggest that the Fund has "purposefully avail[ed] itself of the privilege of conducting activities within the [District]." *Id.*

In sum, Mr. Lee has failed to allege specific facts, or any facts at all for that matter, which would demonstrate that the Fund has maintained some "minimum contacts" with the District of Columbia. *See Shoppers Food Warehouse, supra.* Without such a showing, the trial court could not, consistent with fundamental principles of due process, exercise jurisdiction over the Fund. *See International Shoe Co., supra.* Finally, even if we were to look beyond the substance of Mr. Lee's com-

plaint, the simple act of sending correspondence into the District would not satisfy the " 'minimum contacts' requirement of the due process clause." *Shoppers Food Warehouse,* 746 A.2d at 324. *See General Electric Credit Corp. v. Scott's Furniture Warehouse Showroom, Inc.,* 699 F. Supp. 907, 913 (D. Ga. 1988) ("[T]here is a substantial body of case law indicating that the agreement to mail payment checks into a forum state does not weigh heavily in the calculus of [minimum] contacts [analysis].") (citing *Sea Lift, Inc. v. Refinadora Costarricense de Petroleo, S.A.,* 792 F.2d 989, 994 (11th Cir. 1986)).

Accordingly, for the foregoing reasons, we affirm the judgment of the trial court.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

/s/ Garland Pinkston, Jr.
GARLAND PINKSTON, JR.
Clerk of the Court

Copies to:

Hon. Michael L. Rankin

Clerk, Superior Court

Russell Lee, pro se
4100 MASS Ave., NW (16)

Peter M. Boyle, Esq.
607 - 14th St., NW, #900 (05)